

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Speier Analyst: Gloria McConnell Bill Number: SB 1828

Related Bills: _____ Telephone: 845-4336 Introduced Date: 02/24/00

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Drug Violation through Internet/FTB Offset Civil Penalties from Tax Refunds

SUMMARY

This bill would provide that, upon notification by the Attorney General of a final judgment for defined criminal violations relating to Internet activities involving the dispensing or furnishing of drugs, the Franchise Tax Board (FTB) would be required to subtract the amount of the awarded civil penalties from any tax refund due the taxpayer/defendant.

EFFECTIVE DATE

This bill would be effective and operative on January 1, 2001.

PROGRAM HISTORY/BACKGROUND

Under Government Code Section 12419.5, the Controller has the authority to offset any debts a person or entity owes the state against any amounts that the state owes the person or entity. Section 12419.2 of the Government Code required that the Controller, in conjunction with the FTB, develop an offset program to provide for multiple offsets for the same debtor with specified and adjustable priorities and recognize taxpayers who file tax returns jointly with their spouse.

The Controller has delegated to the FTB the administration of the offset program:

- ⌚ For personal income tax (PIT) refunds, a fully automated computer process intercepts the individual's income tax refund and lottery winnings for offset purposes. To participate in the process, the governmental agency responsible for collection of the debt files a request to participate with the Controller's office. Once participation is approved, the governmental agency refers its accounts to FTB by submitting a list of its debtors on magnetic or paper media. The participating governmental agencies pay for the process based upon the number of accounts submitted. Any amounts offset by FTB are transferred to the governmental agency that referred the account for offset. That agency deposits the moneys into the fund that is appropriate for the particular debt. The participating governmental agencies are billed annually for their share of the automated program's costs. The Attorney General's Office (AG) currently is a participant in the PIT offset process, but for debts other than those proposed by this bill.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ X PENDING

Department Director

Date

Alan Hunter for GHG

4/4/00

- ⌚ For bank and corporation tax (B&CT) refunds, a less automated process than its PIT counterpart is used for offset purposes. This process offsets debts owed the Board of Equalization (BOE) and Employment Development Department (EDD) against B&CT refunds. FTB sends to BOE and EDD on a daily basis a paper listing of FTB's scheduled B&CT refunds. BOE and EDD are given three days to notify FTB if they want FTB to intercept that refund, or any amount thereof, for offset purposes.

SPECIFIC FINDINGS

Currently, in the event a person or entity owes an amount to the state, FTB, as delegated by the Controller, offsets that amount against PIT refunds, B&CT refunds and lottery winnings. The amounts that are offset are transferred to the agency requesting the offset. That agency deposits the moneys into the appropriate fund.

Under this bill, upon notification by the AG, FTB would be required to offset the amount of civil penalties awarded in certain final judgments against any tax refund due the taxpayer/defendant. These final judgments would be for violations of drug laws relating to the prescribing, dispensing and furnishing of drugs on the Internet. FTB's collections would be transferred to the AG for deposit in the General Fund.

Implementation Considerations

The Controller, by law, has the authority to offset, though administratively such authority has been delegated to the FTB. Staff anticipates a request for offset made by the AG for purposes of this bill would be incorporated into the existing offset program. To include these awarded civil penalties in the PIT offset process would not significantly affect the department's PIT offset process. However, the BCT offset process is not fully automated and participation presently is limited to two taxing agencies. To include the AG in that process would require additional project planning, programming and testing activities to modify FTB's corporate accounting computer system (Business Entities Tax System: BETS) and the B&CT offset process. To allow for sufficient planning, staff suggests the operative date for the B&CT offset provisions should be January 1, 2002.

The author's staff has indicated its agreement to amendments to:

- ⌚ provide for a January 1, 2002, operative date for the B&CT offset provisions; and
- ⌚ clarify that FTB would be using the existing offset authority, the delegation thereof, and the existing processes to intercept PITs, B&CTs and lottery winnings for these AG cases.

Staff's suggested amendments are attached.

FISCAL IMPACT

Departmental Costs

To implement this bill for PIT refunds would not significantly increase the department's costs. To implement the B&CT offset provision as of January 1, 2002, would increase the department's costs by less than \$50,000 and may be absorbable within FTB's existing budget as an annual BETS change. If further planning determines additional funds would be needed, such needs would be addressed through the usual budget change proposal process.

Tax Revenue Estimate

This bill would not impact tax revenue.

BOARD POSITION

Pending.

Analyst	Gloria McConnell
Telephone #	845-4336
Attorney	Patrick Kusiak

FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 1828
As Introduced 02/24/00

AMENDMENT 1

On page 2, strike out lines 22 and 23, and on page 3, strike out lines 25 and 26, and insert:

awarded civil penalties from any tax refunds or lottery winnings due to the person who is a defendant in the action using the offset authority under Section 12419.5 of the Government Code, as delegated by the Controller, and the processes as established by the Franchise Tax Board for this purpose. That amount

AMENDMENT 2

On page 3, line 22, strike out "The" and insert:

For notifications made on and after January 1, 2002, the